



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/531,155	09/26/2005	Peter Lawrence Bailey	J3692(C)	4686
201 7590 09/21/2007 UNILEVER INTELLECTUAL PROPERTY GROUP 700 SYLVAN AVENUE, BLDG C2 SOUTH ENGLEWOOD CLIFFS, NJ 07632-3100			EXAMINER YU, GINA C	
			ART UNIT 1617	PAPER NUMBER
			MAIL DATE 09/21/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/531,155	Applicant(s) BAILEY ET AL.	
	Examiner Gina C. Yu	Art Unit 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8,10,12 and 13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8,10,12 and 13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt is acknowledged of amendment filed on June 27, 2007. Claims 1-8, 10, 12, and 13 are pending.

Claim rejections made under 35 U.S.C. §112, first and second paragraphs, as indicated in the previous Office action dated April 3, 2007, are withdrawn in view of the claim amendment. Claim rejection made under 35 U.S.C. § 103 (a), also indicated in the same Office action, is modified to address the claim amendment made by applicants, but the substance of the previous rejection has been maintained for the reasons of record.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-8, 10, 12, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoppe et al. (US 2003/0180277 A1) in view of Hersh (US 6011067).

Hoppe teaches anti-dandruff compositions for scalp. The reference teaches adding conjugated fatty acid, particularly conjugated linoleic acid in the weight amount of 0.00001-5 %, to promote the energy metabolism of the hair root. See [0054] – [0063]. With respect to claim 8, it is viewed obvious that the components are provided in separate containers. The reference further teaches that all geometric isomer forms and position isomer forms as well as the mixtures of such compounds are useful for the invention. See [0061]. Table 1 shows CLA composition which comprises 34.6 % of 9

Art Unit: 1617

cis, 11 trans/ 9 trans 11 cis and 35.9 % of 10 trans 12 cis isomers. See instant claim 13.

Example 3 shows a shampoo comprising CLA of Table 1, gelling agent, and pearlescent agents, which renders the composition opacity. See instant claim 12.

Examples 4-9 also teach clear shampoos, thereby also suggesting formulating clear compositions with CLA.

The reference employs bioquinone as the anti-dandruff agent, and does not teach the anti-dandruff agents of the instant claims.

Hersh teaches that zinc pyrithione has been used for treatment of dandruff, seborrheic dermatitis, flakes and other skin maladies in the form of shampoo, lotion, and cream. See col. 10, line 13 – col. 11, line 8. Example 3 illustrates a shampoo comprising 1 % of zinc pyrithione.

It would have been obvious to one of ordinary skill in the art at the time of the present invention to modify the composition of Hoppe by substituting bioquinone with, or incorporating, zinc pyrithione, as motivated by Hersh, because both components are functionally equivalent anti dandruff agents well known in the art. The skilled artisan would have had a reasonable expectation of successfully producing an anti-dandruff composition with similar efficacy.

Response to Arguments

Applicant's arguments filed on June 27, 2007 have been fully considered but they are not persuasive.

Applicants assert that the claimed combination of CLA and zinc pyrithione shows unexpected synergistic benefits of reducing scalp itch associated with dandruff.

Art Unit: 1617

According to Figure 1 of the specification, using 1% zinc pyrithione shampoo after using CLA lotion showed lowest scalp itchy rating as compared to using non anti-dandruff shampoo/CLA lotion or anti-dandruff shampoo/no CLA lotion.

Firstly, it is noted that applicants' arguments are not commensurate with the scope of the claim because claim 1 is not limited to any specific the amounts of the active ingredients. Examiner also views that the teaching of the prior arts overweighs the evidence of record in this case, or the differences of the itchiness degrees shown here does not seem to be so significant for a skilled artisan to conclude that a surprising and greater than expected results exist because the itch degree of the all tested samples are between about 1.5 and 2, where 1 marks mild and 2, moderate itchiness during week 2 – week 8. This is particularly the case because applicants also have admitted in the specification that CLA is known to treat itchy and irritated skin. See spec. p. 2, bridging paragraph. Furthermore, anti-itching property of zinc pyrithione or other anti-dandruff agents that are recited in claim 1 have been known, as evidenced by Derwent Acc. No. 2001-481320, which teaches that an anti-dandruff shampoo comprising climbazole and zinc pyrithione improves an anti-dandruff effect and anti-itch effect. See KR 2001008904 A, abstract. Thus, it is viewed that the observation of the reduced degree of scalp itchiness by making and using the claimed invention as motivated by the teaching of the prior arts would have been obvious to or expected by one skilled in the art.

Conclusion

No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

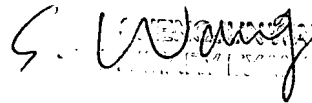
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-8605. The examiner can normally be reached on Monday through Friday, from 8:00AM until 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1617

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Gina C. Yu
Patent Examiner

A handwritten signature in black ink, appearing to read "G. Yu", is located to the right of the printed name and title.